IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 4TH APRIL 2007 / 14TH CHAITHRA 1929

CRL.A.No. 1700 of 2004

S.C.NO. 547/1999 of ADDL. SESSIONS COURT (FAST TRACT COURT-II), TRIVANDRUM
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APPELLANT/ACCUSED NO.1:

JNANASEELAN, S/O.PONNAYYAN NADAR,
THENGINTHADIMELE PUTHEN VEED,
AYYAPPANKONAM, VELLARADA VILLAGE,
THIRUVANANTHAPURAM.

BY ADV. SRI.S.GOPAKUMARAN NAIR

RESPONDENTS:

STATE REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SHRI K.C. SANTHOSH KUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 04/04/2007 ALONG WITH CRL. APPEAL NO.1743 OF 2004, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. KOSHY and T.R.RAMACHANDRAN NAIR, JJ.

Crl. Appeal Nos. 1700 & 1743 of 2004

Dated this the 4th day of April, 2007

Judgment

Koshy, J.

Accused, six in number, were charge-sheeted in connection with murder of one Justin Jose and infliction of injuries on two others and they were charge-sheeted for offences punishable under sections 143, 147, 148, 341,447, 324, 307 and 302 read with section 149 of the Indian Penal Code. A3 to A6 were acquitted for all offences charged. A1 was found guilty under section 324 IPC and A2 was found guilty under section 341, 324, 326 and 302 IPC. A1 filed Crl. Appeal No.1700 of 2004 and A2 filed Crl. Appeal No.1743 of 2004. Accused persons and PWs 1 to 3 and deceased Justin Jose are close relatives and neighbours. Therefore, there is no dispute regarding the identity.

2. PW2 is having an extent of 15 cents of property on the western side of the residential property of A1 and A6 at a place called Ayyappankonam, Vellarada village. They were in inimical terms starting from a boundary dispute between A1 and PW2. PW6, the Panchayat

member intervened in the same and the matter was settled. On 14.6.1998 as per the settlement, boundary was put up and boundary stones were placed and as per the new boundary, three rubber trees standing in the property of PW2 will go to the property of A1 and a portion of the cattle shed of A1 was included in the property of PW2. It was agreed that the rubber trees in the land allotted to A1 will be cut down by PW2 and that portion of cattle shed in the property of PW2 will be demolished by A1. On 21.6.1998 at 2.00 p.m. PWs 1 to 3 and deceased Justin Jose cut down the three rubber trees and A1 demolished the portion of the cattle shed. As per the request of PW2, CW6 came to the property for purchasing the rubber trees cut down by them and A1 objected the sale of the rubber trees since the rubber trees were standing in his property. A1 to A6, in furtherance of their common intention of causing the death of deceased Justin Jose and PWs 1 to 3, formed themselves into an unlawful assembly being armed with deadly weapons like spade, choppers, knife and granite stone and knowing fully well that their acts will be sufficient in the ordinary course of nature to cause their death, A1 beat PW2 with the bottom portion of a dangerous spade on his right shoulder

and then A2 reached near PW1 and cut him with a dangerous chopper on his left hand by uttering that PW1 and others need not be alive and when PW1 ran away, A2 chased him and wrongfully restrained him and then cut him with a dangerous chopper on his head and when PW2 interfered and obstructed him, A2 cut him with a dangerous chopper on the various parts of his body and when deceased Justin Jose came to the rescue, A4 wrongfully restrained him and then A2 cut him with that dangerous chopper on the various parts of his body. A3 pelted a granite stone towards the face of PW3, A5 stabbed him with a knife on his back and other accused persons wrongfully restrained PWs 1 to 3 and beat them with hands and Justin Jose died at the Medical College Hospital, Thiruvananthapuram at 8.30 p.m. So, the accused persons were charge-sheeted for inflicting fatal injuries on the deceased and attempted to kill PWs 1 to 3. PWs 1 to 3 and Justin Jose were admitted in the Medical College Hospital, Thiruvananthapuram and Justin Jose died.

3. On getting information of the death of Justin Jose, CW20, the then Sub Inspector of Police, Vellarada police station at 2.00 a.m. on 22.6.1998 reached the Medical College Hospital and recorded Ext.P1

first information statement of PW1. On the basis of confession made by A1, MO5 spade was recovered from the place it was hidden and on the basis of the disclosure statement made by A2 MO6 chopper was recovered.

4. Now, we will consider the injuries sustained by PW1. Ext.P9 is the wound certificate in respect of PW1. Cause of injury is stated as 'alleged assault by chopper on 21.6.1998 at Vellarada at 4.30 p.m.' He sustained the following injuries:

> "1. Incised wound forehead and frontal scalp 10 x 2 x 1 c.m.
>
> 2. Lacerated wound back of right chest 2 x 1 c.m."

Ext.P11 is the Accident Register-cum-wound certificate issued by Medical College Hospital, Kottayam in respect of PW2. Cause of injury is stated to be as 'assault at 3.00 p.m.on 21.6.1998.' He sustained the following injuries:

> "1. Lacerated wound 10 x 15 c.ms. over the ulnar aspect cutting ulna, ulnar artery, ulnar nerve of right forearm.
>
> 2. Flexed tendons of left forearm partially cut.
>
> 3. Near total traumatic disarticulation at the length of metacarpo phalangial joint.

4. 4 x 2 c.m. long incised wound over aeromio clavicular joint left side.

5. 10 c.m. long incision muscle deep over the delto pectorial groe right side.

6. Incised wound over arm 15 c.m. long inter digital cleft right.

7. Incised wound 5 c.m. right forearm."

PW3 also sustained injuries and wound certificate in respect of PW3 is marked as Ext.P8. There also cause of injuries is stated to be as "alleged assault on 21.6.1998 at 4.30 p.m. He sustained only one incised wound. A2 also sustained an injury on 21.6.1998. According to him, he was attacked by PWs 1 to 3. He was admitted in the Medical College Hospital, Thiruvananthapuram on 21.6.1998. Ext.D5 wound certificate in respect of A2 shows the following injuries:

"1. Incised wound above left knee 3 x 1 c.m. with muscle cut.

2. Lacerated wound below left eye 2 x 1 c.m.

3. Multiple abrasions right hand and anterior abdominal wall."

The alleged cause of injury stated to be as 'caused by an assault at Vilayil on 21.6.1998 at 4.30 p.m. Admittedly, PWs 1 to 3 as well as A1 to A6 are neighbours and there was a dispute regarding boundary and it was settled as proved by PW6. Main defence of the accused is that in

the process of implementing the settlement, there was some disputes and meanwhile prosecution witnesses tried to attack A1 and as a result there was some quarrel and injury was inflicted on A2 and none of the accused were having any weapons with them, but, deceased and prosecution witnesses were having weapons. PW1 was also having weapons. It is the definite case of the accused that when A1 objected to the sale of rubber trees, PW2 and gang demolished the boundary walls and even tried to demolish a tomb of the son of A1 in the property of A1.

5. First information statement was recorded at the Medical College itself and there was no time for concoction. His evidence is in tune with the evidence of prosecution allegations. Hence, we are not reiterating his evidence. PWs 2 and 3 also gave similar evidence. Because of the longstanding enmity between the accused and PWs 1 to 3, even if there is some exaggeration, there are other evidence also in this case, that is, PWs 4 and 5. PW4 is related to the accused. A6 is his sister and A1 is his brother- in-law. According to him, he was also present at the time when settlement was made and also on the date when rubber trees were cut as well as the cattle shed was demolished. Accordingly, there was a scuffle when A1 objected in selling the rubber trees and A1,

after stabbing PW1, inflicted injuries. Thereafter, A2 came from the house with MO6 and inflicted injuries on PWs 1 to 3 and he also gave details of the injuries. PW5 is an independent witness. Evidence of PW5 is in conformity with the prosecution case. He described the alleged injuries inflicted by A1 and A2. His evidence is tallying with the injuries shown in Ext.P6 postmortem certificate proved by PW9 doctor. It shows the following ante mortem injuries:

> "1. Incised wound 9 x 7 x 5 c.m. on the outer and front aspect of right elbow. Underneath the muscles, the median nerve, the blood vessels and bones were found cleanly cut separating a a bony chip from lateral epicondyle of humerus (2 x 2 x0.2 c.m.) and upper end of radius (2 x 0.9 x 0.1 c.m.)
>
> 2. Incised wound 5.2 x 2 x 2.9 c.m. obliquely placed on the outer aspect of right thigh, its upper front end being 17 c.m. below the top of hip bone.
>
> 3. Incised wound 2.5 x 0.9 x 2 c.m. oblique on the outer aspect of right thigh its lower front end 11 c.m. above knee with a tailing 8.5 c.m. long directed upwards and backwards from its upper back end.
>
> 4. Abrasion 3.5 x 1 c.m. vertical on the outer aspect of right leg just above ankle.

> Air passages were congested and contained. Stomach contents even up to the traceable divisions. Lungs were congested. Stomach was three-fourth full with soft rice, pieces of meat carrot and other unidentifiable food particles in semisolid medium without any peculiar smell, mucosa normal. Urinary bladder was empty. All other internal organs were normal."

PW9 doctor deposed before the court that the injuries can be caused by MO6 as well as MO5. There is not much serious cross-examination of the doctor. Doctor also stated that the injuries were on the vital parts of the body. Actually, no serious injuries were inflicted on the vital parts.

6. The Sessions Judge, after considering the evidence, held that the injuries sustained by A2 was not serious and it was not inflicted on the vital parts of the body. However, evidence in this case, especially the injured witnesses, PWs 1 to 3, will clearly show that when A1 objected the selling of rubber trees, that was objected to and there was a sudden fight ensued. It was not pre-planned. Both gathered together in implementation of the settlement of long standing dispute. In fact, part of the settlement was fulfilled and three rubber

trees were cut by PW2 and party and demolished part of the cattle shed stood in the property allotted to PW2. But, dispute arose when PW2 and party decided to sell the rubber trees which were standing in the property allotted to A1. When that was objected, PW2 and party demolished part of the boundary walls. There was also an allegation that the tomb of the son of A1 was demolished by PW2 and group. PWs 1 to 3 as well as the deceased were having weapons like chopper, axe, spade etc. for cutting the rubber trees. Accused were also having weapons with them as they were also demolishing the cattle shed on the basis of the agreement. In fact, it is the case of the prosecution that the MO1 chopper was taken away by A1 and the injuries were inflicted. PW1 in cross-examination also stated as follows:

Evidence of prosecution witnesses itself shows that there was a sudden fight. PW4 was asked a specific question that when the dispute regarding sale of trees arose did he try to call Panchayat member. He answered that fight and struggle were sudden and there was no time to call

panchayat member:

So, it is clear that the injuries were inflicted in the course of a sudden fight, but, at the same time, very serious injuries were inflicted by A2 on PWs 1 and 2 as well as on the deceased. Considering the nature of injuries sustained by the deceased and considering the fact that the injuries were inflicted in a sudden fight and A2 was also injured, we are of the opinion that A2 can be convicted only under section 304 Part II of the Indian Penal Code as there was no pre-meditation. All occurred in a sudden fight in a heat of passion while implementing the settlement of the boundary dispute and sale of rubber trees cut in implementation of the settlement.

In the above circumstances, we set aside the conviction under section 302 imposed on A2, but, convert the same and we convict him for the offence punishable under section 304 Part II of the Indian Penal Code and he is sentenced to undergo rigorous imprisonment for seven

years for the above offence. In view of the injuries sustained by PWs 1 to 3 and in view of the alleged acts proved against A2 and considering the fact that the sentence has to be suffered concurrently, we are not interfering in the conviction and sentence passed for the offence under other sections. We see no reason to interfere in the conviction and sentence imposed on A1.

In the result, Crl. Appeal No.1700 of 2004 filed by A1 is dismissed and Crl. Appeal No.1743 of 2004 filed by A2 is partly allowed. Conviction and sentence imposed on A2 under section 302 of the Indian Penal Code are set aside and he is convicted under section 304 Part II IPC and sentenced to undergo rigorous imprisonment for seven years. Conviction and sentence of A2 for other offences are not interfered with. Conviction and sentence imposed on A1 are confirmed. Accused are also entitled to right of set off.

J.B.KOSHY
JUDGE

T.R.RAMACHANDRAN NAIR
JUDGE

vaa

J.B. KOSHY AND
T.R.RAMACHANDRAN NAIR, JJ.

Crl.A.Nos.1700 & 1743/2004

Judgment

Dated:4th April, 2007